

[REDACTED]  
[REDACTED]  
[REDACTED]  
JAN 04 1990

CERTIFIED MAIL

Dear Applicant:

We have considered your application for exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

The information submitted shows that you were incorporated under the laws of the State of [REDACTED] on [REDACTED].

You indicate your purposes are charitable and educational. Your specific purposes, as stated in your Articles of Incorporation are, "to establish and maintain one or more art galleries, artists' studios and support facilities for the production, exhibition and sale of art work of all kinds, and to establish and maintain suitable facilities and programs for art education."

The activities of [REDACTED] include:

1. The promotion of artistic work of its members by providing space to exhibit and sell their work, and for other creative endeavors, and to promote the enjoyment and appreciation of the arts by the public by providing education, exhibitions and space for public involvement in creative activities.
2. Providing group shows and solo shows for each member artist.
3. Providing publicity for each solo show, and paying for ads costing up to a specified dollar value
4. Classrooms for formal art education programs open to the public for a fee. Leasing rooms for private functions.

5. Renting wall space to artists who are not members for one-person shows as guest artists. Charges could be based on a pro rata share of expenses.
6. The Art Gallery and events will be open to the general public with no admission charged. Members will receive a newsletter, volunteer opportunities, use of art reference library and invitation to receptions. For the payment of certain membership fees, the following is also available:
- a. [REDACTED] poster.
  - b. [REDACTED] percent discount on classes.
  - c. Private gallery tour with your guests.
  - d. Use of gallery for a personal or corporate reception.
  - e. [REDACTED] percent discounts on art purchases.
  - f. Show arranged in your place of business.
  - g. Gallery show in your name with media coverage.
  - h. Original artwork up to 16" x 20" by the [REDACTED] artist of your choice.

Your proposed income is from grants, gifts, fees and assessments of members, sale of paintings and interest. Your proposed expenses are for fund raising, disbursements to members, wages, interest, rent and miscellaneous expenses.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from Federal income tax of organizations that are organized and operated exclusively for charitable, educational and other specified purposes, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a) of the Income Tax Regulations states that in order to be exempt as an organization described in section 501(c)(3) an organization must be both organized and operated for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test it is not exempt.

Section 1.501(c)(3)-1(c) of the Income Tax Regulations states that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

In *Better Business Bureau of Washington, D.C. v. United States*, 326 U.S. 279, 283 (1945), the Supreme Court of the United States held that a better business bureau was not exclusively educational since its activities were aimed in part at promoting the prosperity and standing of the business community, and that a single non-exempt purpose, if substantial in nature, is sufficient to preclude exemption under 501(c)(3) regardless of the number of educational activities.

Revenue Ruling 66-178, Cumulative Bulletin 1966-1, page 138, held that sponsoring art exhibits was an educational pursuit when an organization exhibited works of unknown artists to the public. There was no selling at the exhibits. Membership in the organization was not required to exhibit.

Revenue Ruling 71-195, Cumulative Bulletin, 1971-2, page 228, describes a cooperative art gallery formed and operated by a group of member artists for the purpose of exhibiting and selling the members works of art. The gallery was open six days of the week and a commission on sales was retained to cover costs of the operation. This gallery was held not to be the exempt as it served the private purposes of its members even though the exhibition and sale of paintings might have been educational activities in other respects.

Revenue Ruling 76-152, found in Cumulative Bulletin 1976-1, on page 152, held that a nonprofit organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover cost of operating the gallery, does not qualify for exemption under 501(c)(1) of the Code.

Based on the information furnished with your application, the private purposes of your members are being served as described in the following paragraphs:

- a. Since no details have been provided, you have not shown that your plans for providing formal art education programs for a fee do not serve a private purpose. Further, you have not shown that your plan to provide undetined assistance to needy artists, craftspeople and students serves a charitable purpose. It is not known whether membership is required for these benefits. However, your operation of the gallery for the exhibit/sale of art on behalf of your members, most of the proceeds of which are paid to the members is similar to Revenue Ruling 71-195 and as discussed in that ruling, serves substantial private purposes. All members may exhibit, whether or not they are known, and you will conduct sales on behalf of your members.
- b. Studios are sublet for a fee that may or may not represent the fair market value. Although these studios will be of some educational value to the visiting public during designated periods, the benefit to the artist members is substantial.



- c. Likewise, making workshop space available to artists or groups of artists for the conduct of classes for their personal gain as well as for education of the public furthers a substantial private purpose. When done for a fee that is not based on fair market value, inurement of income may result.
- d. Providing group and solo shows for your member artists and providing publicity for each show for ads costing up to a specified dollar value, constitutes a substantial benefit to the artists members.
- e. Disbursements to or for the benefit of your members is not the type of activity carried on by an organization organized and operated exclusively for the purposes described in section 501(c)(3).

Based on items "a" through "e" above, it is held that your organization is operated for the private benefit of its artist members. Therefore, the organization fails the operational test. Further, you fail the organization test since "providing artists and craftspeople an opportunity to work, study and grow" and "for providing artists and craftspeople with an outlet for creative training and expression" do not further the charitable or educational purpose in Income Tax Regulations section 1.501(c)(3)-1(b)(1)(i) and (iii). Therefore, it is concluded that you are not an organization described in section 501(c)(3) of the Code.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Form 1120.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this you should file a written appeal as explained in the enclosed Publication 292. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us. In accordance with section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials if this determination becomes final.

[REDACTED]

If you do not appeal this determination within 30 days from the date of this letter as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination within the time provided, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

Sincerely Yours,

[REDACTED]

[REDACTED]

District Director

Enclosure: Publication 892

cc: State Attorney General [REDACTED]